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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUAN CORREA-GUTIERREZ,
Petitioner,
v.
WARDEN,
Respondent.

Case No. 2:23-cv-08911-CBM-KES

ORDER ACCEPTING REPORT AND
RECOMMENDATION OF U.S.
MAGISTRATE JUDGE


Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition (Dkt. 1), the other records on file herein, and the Report and Recommendation of the U.S. Magistrate Judge (Dkt. 5). No objections to the Report and Recommendation were filed, and the deadline for filing such objections has passed. The Court accepts the report, findings, and recommendations of the Magistrate Judge.

IT IS THEREFORE ORDERED that Judgment be entered dismissing the Petition without prejudice for failure to exhaust administrative remedies.

As a federal prisoner proceeding under 28 U.S.C. § 2241, Petitioner is *not* required to obtain a certificate of appealability (“COA”) in order to appeal to the United States Court of Appeals in this case. See Harrison v. Ollison, 519 F.3d 952,

1 958 (9th Cir. 2008) (holding that the plain language of 28 U.S.C. § 2253(c)(1) does
2 not require federal prisoners bringing § 2241 petitions to obtain a COA in order to
3 appeal, unless the § 2241 petition “is merely a ‘disguised’ § 2255 petition”); see
4 e.g., Tomlinson v. Caraway, No. 14-cv-020094-VBF-KK, 2014 U.S. Dist. LEXIS
5 131448 at *2, 2014 WL 4656432 at *1 (C.D. Cal. Sept. 16, 2014) (adopting report
6 and recommendation and noting that petitioner in federal custody was not required
7 to obtain a COA to appeal the denial of his § 2241 petition).

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9 DATED: APRIL 3, 2024



CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE